# THE ANTI-UNION.

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TO THE

## EDITORS OF THE ANTI-UNION.

*Continued from our laſt.*

HAVING, I hope, ſucceſsfully attempted to prove that a legiſlative Union with Great Britain would be a ſurrender of the conſtitution of Ireland, I now proceed to my ſecond propoſition, which is, "That the parliament of Ireland will be guilty of uſurpation, if they aſſume a power to enact ſuch an Union, without the expreſs conſent of the people."

To prove the incompetency of the legiſlature to do an act which overturns and aboliſhes the conſtitution, under which they are appointed, and which it is their duty to adminiſter, it is neceſſary only to prove that no legiſlature can have an abſolute and unlimited power; for if there be any limit to their authority, they muſt of neceſſity be reſtrained by that limitation from doing any act which goes to the overſion of the conſtitution which gives them birth; becauſe it would be abſurd and a contradiction to ſuppoſe that a conſtitution deſigned for the permanent government of a people, ſhould give a power to a body appointed only to govern under and by that conſtitution, to deſtroy the conſtitution itſelf—one might as eaſily ſuppoſe a part to be greater than the whole, as that a legiſlature appointed to govern, according to a fixed conſtitution, ſhould have a power of abrogating the very power which gives them exiſtence. If there be any limitation, then I ſay, to the power of the legiſlature, that limitation reſtrains them from repealing or abrogating the parent conſtitution. But I ſay, it is abundantly clear as well as from the nature of what is called the ſupreme power in every ſtate, as from the peculiar nature of the legiſlature under our conſtitution, that this limitation of the power of parliament does exiſt.

It is clear, firſt, from the nature of the ſupreme power in government; for ſupreme power, when applied to a governing or legiſlative body, muſt mean in the firſt inſtance, a RECOGNIZED *authority* or RIGHT *veſted* in them by the governed, or thoſe who framed the government. If *ſupreme power* be underſtood in any ſenſe diſtinct from a recognized authority, or veſted right, it muſt be meant for *force* or *might*, and becomes rather expreſſive of a phyſical than of a moral idea. If by the "SUPREME POWER," which is ſaid to reſide ſomewhere in all governments, be meant a power that extends to acts of all kinds whatever, uncontroulable by any fixed principle, moral right or duty, then there ceaſes to be any ſolid diſtinction between legitimate government and the moſt unjuſt deſpotiſm or tyranny; becauſe there is nothing to reſtrain the one or the other from acting oppreſſively, unjuſtly, or tyrannically. If there be no paramount principle, right, or duty, to reſtrain the authority or bind the power of a legiſlative aſſembly, the only difference between them and a Nero, or a Caligula, is a *numerical* difference; the difference between *one* for inſtance and *five hundred*; and if it be true that the government of a multitude of tyrants is more degrading and dangerous than that of a ſingle one, the people of theſe *free* countries are in a much worſe ſituation than the inhabitants of Conſtantinople where the ſovereign power reſides in *one* man. It is plain, therefore, that there is a limit to the ſupreme power with which every government is ſaid to be veſted, and this limitation of the governing power is recognized by the writers on the law of nature as well as thoſe who have treated of government in a ſtate of ſociety. Thus CUMBERLAND in treating of this law of nature deduced as a corollary this limitation of the ſupreme power of the ſtate "*Notandum porro eſt, quod ab eodem fine propter quem conſtituitur imperium, ſeu poteſtas civilis, naturaliter et* neceſſario limitatur. *Omne quippe medium fine ſuo adaptandum eſt, ut nec ab eo deficiat nec eum* excedat. *Adeoque manifeſtum eſt quod in ordine ad honorem Dei Gentiumque omnium felicitatem,* non poteſt fundari imperium quod JUS habeat HÆC EVERTENDI." [*Cumberland de legibus naturæ, Conſectarium* 7th] that is, "It is worthy of obſervation that every government or civil power is naturally and *neceſſarily limited* by the end for which it is inſtituted; for every mean ſhould be adapted to the end aimed at, ſo that it ſhould neither exceed nor fall ſhort of it; and therefore, it is manifeſt that in order to promote the glory and honour of Almighty God and the happineſs of all nations, no kind of government can be eſtabliſhed which can have any right or power to overturn or defeat theſe great ends."

The limitation of the Sovereign power is here fully and explicitly recognized by a writer of high authority: The extent of that limitation he deſcribes in a ſubſequent paſſage—"*Nihil,* ſays he, *illis* (thoſe poſſeſſing the ſupreme power of the ſtate) *vetitum eſt, niſi ne neceſſariam Dominiorum diviſionem violent, qua Deo ſuâ, hominibuſque aliis aſſignantur; neve* ceteras leges naturales *evertant ad quas conſervandas ipſa fundantur & quarum viribus tota debetur regnantium ſecuritas ac felicitas,*" *(Cumberland ibidem;)* that is, "They are under no reſtriction, but that they ſhall not violate the neceſſary diſtinction of property by which what belongs to the Deity and to men is reſpectively aſſigned to each, and that they ſhould not contravene thoſe laws of nature, to preſerve which they are inſtituted, and on which the ſecurity and happineſs even of thoſe who govern depend." Thoſe, then, who poſſeſs the ſupreme power in a ſtate have not a right to violate property, becauſe they were inſtituted for the protection of it, and they cannot have a power inconſiſtent with the end of their inſtitution. But what property more valuable to man than his right to liberty? what property more valuable to a community than it's independence? If there be none, then I ſay it is proved that the ſupreme power in any ſtate cannot have a right or an authority to enact any law or to perform any act which goes to the violation of the political liberty and independence of the ſtate which they govern. Now

if *no* legiſlature can have a power to do this, then the Iriſh legiſlature cannot do it: but I have proved they will do this if they preſume to agree to an Union without the expreſs conſent of the people.

But there is another limitation to the ſupreme power as appears by this author, and that is, "They cannot abrogate or contravene any of the laws of nature which government is inſtituted to enforce and protect." Now, I aſk, muſt not every government be founded to preſerve to the community they govern the rights of liberty and property, ſo far as theſe can be enjoyed conſiſtent with the peace and good order of the ſociety? And I will aſk farther, whether the ſubmiſſion of the liberty and property of one country to another by the government of the former, does not tend to endanger that liberty and property? But ſuch a ſubmiſſion, I ſay, is implied in an Union;—and therefore, I contend, that no power on earth but the nation, or ſome perſon or perſons *expreſsly* appointed by them for that purpoſe, can have power to aſſent to ſuch a meaſure.

But without recurring to authority on ſo plain a ſubject, you will perceive, on a moment's conſideration, that no government can poſſeſs a power abſolute and uncontroulable in every ſenſe, unleſs that government be an uſurped one; and of an uſurped government, the *power* is limited by its *phyſical* force:—for you will ſee, that if it be an appointed, elected, or conſtituted government, its powers muſt be limited by the appointing, electing, or conſtituting party; for no man, or body of men, could freely give to another man, or body of men, a power, that is, a right, to do whatever evil or miſchief he or they might think proper, even to the extent of depriving the electors, &c. of their lives and property, or tranſfering them to ſlavery. The power granted to governments muſt therefore, in the nature of things, be bounded by the intereſts and well being of thoſe they govern; for theſe purpoſes, for all good purpoſes, they may be truly ſaid to have an abſolute and uncontroulable power, but it is for thoſe purpoſes only; and the moment that any legiſlature or government attempt to diſturb private property, to violate the lives, or deſtroy the civil liberty of the community they were appointed to govern, that moment they act without authority, and are, *quoad hoc*, uſurpers and tyrants.

Where the government or legiſlature is of new creation, we perceive there is always expreſsly delared a limitation to the ſupreme power. Certain caſes are reſerved, in which recurrence muſt again be had to the people, or that portion of them which originally appointed the governing power; whether that limitation refers to the *exerciſe* of their authority, or to the *duration* of it.

Where the government or legiſlature exiſts under an old conſtitution, and the origin of it cannot be traced back, there the legiſlative power is limited by eſtabliſhed precedents, and they are never allowed to poſſeſs any authority or power which their predeceſſors did not exerciſe. If men learned in the conſtitution, or its practice, declare their opinions with reſpect to the limits of the legiſlative power, thoſe opinions will be entitled to regard, and will be arguments for or againſt the original exiſtence of the power or privilege in queſtion. But thoſe opinions will be entitled to regard only ſo far as they are ſupported by proof—and they who reſort to thoſe authorities to prove that an abſolute or uncontroulable power exiſts in the governing body, prove by the mere act of reference, that that abſolute and uncontroulable authority depends upon opinion or precedent—that is, is *limited* by opinion and precedent; for it can be *abſolute* only ſo far as thoſe authorities or precedents prove it to be ſo. But *opinion*, in a matter of this kind, deſerves no attention if be not founded upon facts, or incontrovertible deductions of reaſon—if it reſt on *facts* it can only ſhew the power of the legiſlature co-extenſive with the former exerciſe of it—if on reaſoning and inference, it can never prove that this power and authority ſhould be perfectly abſolute and uncontroulable, becauſe it is proveable, that ſuch a power would be miſchievous.

If any legiſlative body poſſeſs this abſolute power, the country which they govern can poſſeſs no CONSTITUTION. The will of the deſpots (for ſuch they muſt be if inveſted with ſuch power) is there the only conſtitution. They may have laws, indeed, but what is generally underſtood by conſtitution, they cannot have—becauſe there are no fixed rules to which the laws enacted by them muſt be referred. There are no immortal principles which muſt live for ever, and pervade and regulate the enactions of every ſucceſſive legiſlature: for inſtance—if the legiſlature of Ireland be abſolute, and may by an Union, or any other means, change the whole frame of the government, what conſtitution have WE? A certain mode of electing the popular branch of the Houſe of Commons—a certain form by which Peers muſt be created—and certain rules by which Parliaments muſt be holden, and their duration limited. All theſe we have to-day—but if the Parliament be abſolute we may not have them to-morrow. Theſe, then, or any other aſſignable privileges or rights which we poſſeſs, cannot be called the fixed CONSTITUTION of this country; becauſe if the Parliament have an abſolute power, they may repeal or abrogate all of thoſe forms, rights and privileges, whenever they think proper. Our conſtitution, as we call it, is as ſhort-lived as our mutiny bill; and that bleſſing which we boaſt, which we have fought for, and which we vainly prate about tranſmitting to our poſterity, a certain ſet of gentlemen in College-green, with the aſſent of a great perſonage in London, may in a few days, legally and rightfully, extinguiſh for ever! What we have called the vile ſlander of Tom Paine, who told the people of England they had no conſtitution, is literally true; and we have yet to ſeek for one, either in his dreams, or wherever elſe we may find it.

I think I have ſhewn that no government can poſſeſs an abſolute and uncontrolable power; but whatever may be the caſe with reſpect to other governments, it is moſt manifeſt, from the *practice* and the *theory* of the Britiſh Conſtitution, that the legiſlature of Gt. Britain, (the ſame holds of Ireland) do not poſſeſs that abſolute, or uncontrolable authority. Firſt, for the theory:—By that, this popular branch of the legiſlature has always been elected for a definite time, at the expiration of which, or earlier at the will of the ſovereign, they were to return to the rank of private citizens. Here is an expreſs limitation of the power of the legiſlature, in point of duration; and by this limitation, the Britiſh Conſtitution recognizes the neceſſity of limiting, in

ſome inſtances, the authority of the legiſlative body. Now, I aſk, is this limitation a vital and eſſential part of the conſtitution, which the legiſlature itſelf cannot break through, or violate? If it be ſaid it *is*—I ſay, then, here is an inſtance where the ſupreme power of the legiſlature, is *impotent*—and therefore the idea of their being abſolute and uncontrolable, is true, only *ſub modo*. If it be anſwered, that Parliament might, by an act of the whole legiſlature, declare the preſent Houſe of Commons, perpetual; and even empower the preſent members to appoint their ſucceſſors; then, in the firſt inſtance, I ſay as above, there exiſts no conſtitution—the people have no rights. But I anſwer further to this aſſertion, that the legiſlature do not poſſeſs this power; firſt, becauſe it is one, for the exerciſe of which there is no precedent; and ſecondly, becauſe they cannot claim it on the ground of abſtract right, for it is not neceſſary to the purpoſes of their appointment, viz. the good government of the country;—but on the contrary, involves in its exerciſe the complete deſtruction of the rights and civil liberty of the nation.

It may, perhaps, be ſaid, "that facts are againſt me—for that the Britiſh Legiſlature, in the ſeptennial bill, have lengthened the term of exiſtence of the then Houſe of Commons, beyond the period for which they were elected by the people; and that the power which did this, might have alſo prolonged their duration for life, as well as for a year or two; that there would be no more uſurpation in the one caſe, than in the other." I anſwer, that the moſt learned and virtuous men in England, declared that act of the Britiſh Legiſlature, an *unconſtitutional uſurpation*, and therefore the high authority of thoſe names, makes for my argument. But I ſay, alſo, that the two caſes, a prolongation of the exiſtence of parliament for a very ſhort period, for reaſons of convenience and public utility, and a complete perpetuation of the popular repreſentation, elected but for a limited time, are infinitely different. The one is only a regulation of the people's right, and left in their hands the power of procuring the repeal of that regulation after the next election. The other would be a complete annihilation of the right, without any legal means left to the people, to procure its reſtitution. I infer, therefore, on the whole, that by the theory of the Britiſh Conſtitution, the legiſlative body has not the power of abrogating that fundamental law of the conſtitution, namely, "the popular branch of the legiſlature, ſhall have but a temporary duration, and the right of electing that branch, ſhall remain for ever with certain deſcriptions of the people."

With reſpect to the *practice* of the conſtitution, I ſay it is equally clear that the Britiſh Legiſlature, and every branch of it is conſidered, as having, in ſome inſtances, a limited power. Each branch of the legiſlature, reſtrains the authority of every other. The Commons refuſe to the Lords the right of originating money-bills. The Peers claim excluſively the right of judicial power. The Prince holds excluſively, the ſword of ſtate; and both houſes join in keeping the prerogative within the *conſtitutional* limits. Why theſe checks? Becauſe they who framed the Conſtitution of England, were of opinion that the legiſlative power ſhould be reſtrained within certain bounds, and they believed this would be beſt effected by giving to each of the three branches a check upon the other two; for by theſe means the *whole* would be reſtrained from aſſuming or exerciſing an *unconſtitutional* or dangerous power over the ſubject. The framers of this conſtitution have recognized the principle of limitation and check on the *ſupreme power* by creating in its very eſſence a check to inordinate ambition. Nor can any argument be drawn from this cautious and wiſe conſtitution of the legiſlative body in favour of veſting it with civil omnipotence—for to argue that it is framed ſo wiſely that no danger can ariſe from inveſting it with abſolute power is but to ſay "give it authority to act abſolutely and without control, becauſe from its nature it is neceſſarily *limited* in its operations, you may ſafely truſt it with abſolute power, for it is *incapable* of uſing it."

This incompetence of the legiſlative body to do certain acts which are contrary to the truſt repoſed in them and hoſtile to the liberty of the people, though it has been not fully aſſented to by one or two law writers whoſe profeſſional habits of thinking ſeem to have narrowed their view of the broad principles of freedom and government, yet meets the fulleſt ſanction of one of the greateſt names of modern times—it is the doctrine of Locke. Speaking, in his Eſſay on Government (about the period of the Revolution, when the nature of Engliſh liberty began to be ſtudied and underſtood) of the power of the legiſlature, he deſcribes particular acts to which their power is incompetent. One of theſe is that ſpecific act which the Iriſh Parliament will aſſume power to perform ſhould they agree to an Union, that of transferring to other hands, not choſen by the people, the right of legiſlation.

"The legiſlature, ſays Mr. Locke, (on government, ſect. 140.) cannot transfer the power of making laws to any other hands; for it being a delegated power from the people, they who have it cannot paſs it over to others; the people alone can appoint the form of the common-wealth, which is, by conſtituting the legiſlature, and appointing in whoſe hands it ſhall be. The power of the legiſlature being derived from the people, by a poſitive voluntary grant and inſtitution, can be no other than what that poſitive grant conveyed, *which being only to make laws, and not to make legiſlators, the legiſlature can have no power to transfer their authority of making laws, and place it in other hands.*"

Again, in his chapter on the diſſolution of government—"The legiſlature acts againſt the *truſt* repoſed in them when they endeavour to invade the property of the ſubject, and to make themſelves, or any part of the community, *maſters*, or *arbitrary diſpoſers* of the lives, *liberties*, or fortunes of the people."

A violation of the truſt repoſed in them by the legiſlature, Mr. Locke goes ſo far as to ſay expreſsly, is a *diſſolution* of the government—and he mentions, as a ſpecific inſtance of breach of truſt that diſſolves the government, that very act which muſt neceſſarily be implied in an Union. "*The delivery*, alſo," ſays he, "*of the people into the* SUBJECTION *of a* FOREIGN *power*, either by the prince, or by the *legiſlature*, is certainly a *change of the legiſlature*, and ſo a *diſſolution* of the government—for the end why people entered into ſociety being to be preſerved one *entire*, *free*, INDEPENDENT ſociety; to be governed by ITS OWN laws—this is loſt whenever they are *given up into the power of another.*"

It would ſurely be ſuperfluous to ſeek farther authorities on this point, when a writer, whoſe doctrines for a century have been ſanctioned by the aſſent of the men moſt learned in the conſtitution of England, and have been inculcated in your Univerſity, in every ſucceſſive generation of legiſlators, from his own time to the preſent hour, declares in ſuch expreſs and warm language, "that the legiſlative body HAVE NO RIGHT to alter the legiſlature—that they CANNOT transfer the power with which the people have inveſted them into other hands—and that ſhould they attempt to deliver over the people they govern to another country, the government, itſelf, would *ipſo facto* be DISSOLVED!"

To apply theſe doctrines to the preſent caſe, it remains only to ſhew, that an Union would be an alteration of the legiſlature—that it would be a transfer by the parliament, who ſhould vote ſuch a meaſure, of their authority into other hands—and that by an Union this country would be rendered ſubject to Great Britain. But theſe propoſitions are truiſms. Can it be doubted, that an abolition, for ever, of the *diſtinct* and independent Parliament of Ireland, and a ſubſtitution of the Britiſh legiſlation in its ſtead, is an alteration of the legiſlature? Can it be doubted, that by giving to the Britiſh Parliament, encreaſed by a few Iriſh repreſentatives, the right of governing Ireland, the Iriſh legiſlature would transfer to other hands the right which the people had entruſted into their hands only? Can it, in a word, be doubted, that an Union would, for ever, deliver up the people of Ireland to the good will and pleaſure of the Britiſh people? As yet I have never heard any of theſe points queſtioned, and until I do I ſhall advance no farther argument to prove them.

[*To be concluded in our next.*]

## LLOYD's LIST EXTRAORDINARY.

ARRIVED in *Caſtle-haven* harbour, the Ordnance bomb-catch, Hon. T. P. captain, with the Union flag hoiſted, after a cruiſe in the Lakes of Weſtmeath—out ten days, took nothing.

## WANTED—A COLONEL OF MILITIA.

HE muſt weigh from 17 to 19 ſtone—be turned of 40—have a ſtoop—be near-ſighted and wear ſpectacles—ſlobbering no objection. He muſt never have been in a military ſituation before, leaſt he may be prejudiced in favour of old ſyſtems, and not ready to adopt new tactics. He muſt have a fortune of near 8000l. a year that he may be above any temptation to deſert from the King to the People. He muſt be a Member of Parliament, but not *a ſpeaker*, and may if he pleaſes be a Commiſſioner of the Revenue. Apply at Maryborough for particulars, in haſte. He will, if approved of, be employed, *Coote qui Coute.*

Erratum—in this laſt article—laſt line—for Coote, read COUTE.

*The following State Paper, which has not yet been made public, we have received through the kindneſs of our friend Mr. Nabman, a perſon of eminence in the Profeſſion.*

Petition of the BAILIFFS of Ireland, to both Houſes of Parliament,

SHEWETH,

THAT your Petitioners are practitioners and followers of the law—and that previous to the year 1782, the branch of the profeſſion to which they belong, received in this kingdom, the moſt liberal encouragement from both the Engliſh and Iriſh Legiſlatures—that in the ſaid year, certain laws were enacted, which partially and unjuſtly preferred the intereſts of the merchants and manufacturers of the nation, to the more uſeful ſervices of your Petitioners—that by means of the aforeſaid iniquitous and oppreſſive laws, your Petitioners were reduced to indigence, while they had the mortification to ſee tradeſmen and mechanics of all deſcriptions, acquiring wealth, and flouriſhing in proſperity; and (to the ſhame of the kingdom be it ſpoken) from the manner in which the ſpunging-houſes and debtors'-priſons were deſerted, it ſeemed as if there were neither law nor juſtice in the country;—But your Petitioners have heard with much ſatisfaction and gratitude, that the Engliſh Miniſtry and Iriſh Government have formed a ſcheme whereby the trading part of the community will be put down to its former and natural ſituation, your Petitioners be greatly benefited, and the priſons again ſtocked with inhabitants.—Your petitioners humbly truſt, that your honours will conſider their caſe with kindneſs and compaſſion, and that for their ſakes you will adopt the meaſure of an UNION with Gt. Britain, in which your Petitioners, (with their wife and patriotic friends, the members of the D'oyer hundred in the city of Cork) can ſee nothing but private emolument, and public advantage. And Petitioners will ever pray, &c.

Dublin: Printed by James Moore, 45, College-green.